IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4952 OF 2004
(For condonation of delay)
IN
CRIMINAL APPEAL NO. OF 2004

M/s. J.K. Industries Ltd. ...Applicant.

V/s

Anil Kagale & Ors. ...Respondents.

ALONG WITH
CRIMINAL APPLIATION NO.4954 OF 2004
(For condonation of delay)
IN
CRIMINAL APPEAL NO. OF 2004

M/s. J.K. Industries Ltd. ...Applicant.

V/s

Sudhir G. Kagale & Ors. ...Respondents.

Mr. A.S. Khandeparkar for the applicant.
Mr. S.S. Aradhye for respondent Nos. 1 and 2.
Mr. A.S. Shitole APP for the State.

CORAM: V.M.KANADE,J.

DATE: 23rd March, 2005

P.C.:

1. Heard the learned Counsel for the applicant and the learned Counsel for respondent Nos. 1 and 2.

2. These applications for condonation of delay in filing the application for leave to appeal are being disposed of by this common order as the facts and question involved in both these application are identical.

3. Applicant has filed Criminal Application for leave to appeal challenging the order dated 4/3/2002 passed by the Judicial Magistrate, First Court, Kolhapur who, by the said order, acquitted the respondent Nos. 1 and 2. and dismissed the criminal case filed by the applicant under section 138 of the Negotiable Instrument Act by exercising discretionary power vested in him under section 256 of the Criminal Procedure Code.

4. It is submitted by the learned Counsel appearing on behalf of the applicant that the applicant had been diligently pursuing the criminal complaint before the JMFC, Kolhapur. However, on 4/3/2004, he could not remain present and, therefore, his complaint was dismissed. It is submitted that initially against the said order of dismissal of the complaint for want of prosecution, a revision application was filed before the Sessions Court on 12/4/2002. It is submitted that this revision application was filed on the advice given by his advocate who was appearing in the Trial Court and the said revision application was filed within five weeks from the date of dismissal of the complaint. This revision application was disposed of on 20/7/2004 and an application was made for certified

copy of the judgment of the Sessions Court on 2/8/2004 and it was made available to the petitioner on 11/8/2004. It is submitted that, thereafter, immediately present application was filed. It is submitted that the period from 12/4/2002 to 20/7/2004 may be excluded as the applicant had bonafide acted on the advice given by his lawyer and had filed revision application before the wrong forum. He submitted that, therefore, delay of 914 days in filing the Criminal Application for leave to appeal may be condoned.

5. The learned Counsel appearing for respondent Nos. 1 and 2 vehemently opposed the said submissions made by the learned Counsel appearing on behalf of the applicant. He has given list of dates on which the complainant was absent in the criminal case. Respondent Nos. 1 and 2 filed affidavit in reply in which it has been stated that the it was the mistake of the applicant to have moved the revisional court particularly when under the provisions of section 378 of the Cr.P.C. an appeal was maintainable. He submitted that, therefore, the delay has not been properly explained.

6. In this particular case an application has been

filed by the complainant for setting aside the order of the Magistrate who has dismissed the criminal complaint filed by the applicant for want of prosecution. In the present application, applicant has made out sufficient ground for condonation of delay. It is an admitted position that after the criminal complaint was dismissed on 4/3/2002, on 12/4/2002 a revision application was filed by the applicant. This clearly shows that the applicant was diligent and had promptly taken steps on the advice given by his advocate. In my view, the period during which the matter was pending before the Revisional Court ought to be excluded. The delay, therefore, caused in filing this criminal application for leave to appeal is condoned.

7. Accordingly, both the above Criminal Applications are allowed in the above terms.

V.M. KANADE, J